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SENSITIVE

STATE FOR EB/TPP/IPE( CLACROSSE, JOELLEN URBAN)  
DEPT PLS PASS USTR FOR JENNIFER CHOE-GROVES, JIM SANFORD  
COMMERCE PLEASE PASS USPTO

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SUBJECT: FRANCE: SPECIAL 301 REVIEW YEAR 2006

NOT FOR INTERNET DISTRIBUTION

Summary

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1. (SBU) In 2005, the French government stepped up its efforts to combat counterfeiting and piracy. In particular, 2005 was marked by an increase in joint activities with French companies and cooperation between the government and the private sector. The GOF has also worked closely with the private sector on a series of regular public information campaigns. The GOF is also currently working on a new version of its digital copyright draft bill to lessen original restrictions on CD and DVD copying and stem the ensuing political upheaval. The revised draft bill should be before Parliament on March 7-10. End Summary.

Government Actions

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2. (SBU) The French government estimates that counterfeiting and piracy drain 6 billion euros annually from France's economic growth and costs 30,000 lost jobs. Recognizing that it will take a serious and long-term effort to stop the problem, the French Government has continued to implement its eleven-point plan against counterfeiting, launched by then-Economy and Finance Minister Nicolas Sarkozy in 2004. France is particularly exposed to imports of counterfeit products (especially luxury goods) as 17 percent of all counterfeit goods end up here. Highlighted measures of France's efforts include:

-- Customs and Seizures: The elaboration of a national plan with the GOF's customs administration, focusing on yearly objectives for the interception and seizure of goods. The objective for 2005 was to seize 4 million counterfeit articles, a ten percent increase over 2004. Almost 72 percent of all seized goods come from Asia, mostly China, but also India for pharmaceutical drugs, and Pakistan for textiles. Counterfeited goods from Turkey and Italy are on the way down. However, France has become a producer of counterfeit goods, representing 6 percent of all seized items. Some 44 percent of all seized goods are destined for the French market, and another 26 percent for Africa (a figure constantly on the rise). Textiles represent 16 percent of all seized goods, compared with 25 percent in 2003. The other significant category is "luxury goods," which represents another 8 percent.

-- Public Awareness: The organization of regular public education campaigns to increase awareness of the full social and economic costs of counterfeiting and piracy as well as the safety and health risks incurred. The Industry Ministry has earmarked 5 million euros in 2005 for such campaign, a ten-fold increase over a year ago. The campaign was organized by the National Anti-Counterfeiting Commission, together with the French Patent Office (INPI), French Customs and the Competition and Consumer Affairs and Frauds Office of the Ministry of Economy, Finance and Industry (DGCCRF-Direction Generale de la Concurrence, de la Consommation et de la Repression des Fraudes).

-- Prosecution: To discourage possible IP rights infringers, France has increased fines and prison terms. IP rights infringers may now be sentenced to three years of imprisonment and be subject to fines of up to 300,000 euros (instead of 150,000 euros). In trademark infringement cases, imprisonment may now go up to four years and fines up to 400,000 euros. If the counterfeiting is the act of an organized group, the sentences may be even higher. Furthermore, the Ministry of Justice recently sent out guidelines to magistrates and public prosecutors to guide them in evaluating damages to be awarded to companies.

-- Network of Experts: A inter-agency network of experts in all the ministries concerned has been set up to assist companies in enforcing their rights in the counterfeiting countries. The GOF has also maintained its 4 IP advisors co-

located in French Embassies overseas such as China, Russia, Thailand etc.

-- Customs Training: France will shortly implement the European eMAGE project, an Internet-based service, providing easy and real-time multilingual access to databases of trademarks and industrial designs designed to help customs authorities looking for counterfeit goods. French Patent Office INPI heads the consortium developing the eMAGE program.

-- Expanded Authority: As part on the implementation of an April 29, 2004 Directive on the enforcement of Intellectual Property Rights and a EU Council regulation 1383/2003 extending the scope of IP rights holders, the GOF will extend to counterfeiting the powers two offices of the French Economy, Finance and Industry Ministry: Tracfin, in charge of fighting fraudulent financial circuits, and DGCCRF, which handles competition, consumer and fraud cases. The GOF will further introduce professional training for all law enforcement and government officials dealing with counterfeiting.

#### Public-Private partnership

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13. (SBU) Last November, France hosted the Second Global Congress on Combating Counterfeiting and Piracy, convened by Interpol and the World Customs Organization (WCO), whose Secretary General, Michel Danet, is a former senior French

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customs official. The Congress approved the initiative by the Paris-based International Chamber of Commerce (ICC) to launch the Business Action to Stop Counterfeiting and Piracy (BASCAP) in order to increase public and political awareness of the economic and social harm associated with counterfeiting and piracy. In a separate meeting, BASCAP participants, including CEOs from around the world representing the food and drink, pharmaceutical, textile, home products, finance, television, software and music sectors, agreed on an action plan. The purpose of the plan is to establish counterfeiting and piracy indices, and compile case studies and statistics -- the first global, cross-sector study -- of the counterfeiting and piracy problem.

14. (SBU) Such business initiatives are not uncommon in France, where the public sector has developed a close working relationship with government officials. The Union of French Manufacturers ("Union des Fabricants" or "UNIFAB"), the most important private anti-counterfeiting organization in France, spearheaded France's push for stiffer IP laws and greater awareness of the problem of counterfeiting and of its ramifications with organized crime. Working hand-in-hand with the government's National Anti-Counterfeiting Committee, UNIFAB signed a partnership charter in July 2005 with several towns in the South of France (including Marseilles, Cannes, and Nice) to intensify the struggle against the upsurge of counterfeit goods in the region, which largely come through Italy. Earlier, UNIFAB had organized the 9th French edition of the Global Day against Counterfeiting.

15. (SBU) UNIFAB is also pushing for another controversial bill currently before Parliament, the Digital Copyright bill, also known as the Copyright and Related Rights bill or DADVSI ("Droits d'Auteur et Droits Voisins).

#### Combating Piracy on the Internet

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16. (SBU) The French Government is reworking its digital copyright protection bill designed to comply with a 2001 EU Directive on digital piracy. The GOF faced a political crisis in December 2005 in trying to gain passage of this bill, when lawmakers rebelled by endorsing amendments to legalize the online sharing of music and movies instead of punishing it. Under the original proposals, those caught pirating copy-protected material would have faced USD 360,000 in fines and up to three years in jail.

17. (SBU) The amendments voted would legalize file-sharing by anyone paying a monthly royalties duty estimated at USD 8.50. The vote by members of France's lower house dealt a setback to Culture Minister Renaud Donnedieu de Vabres, who had introduced the draft legislation and who disavowed the legislature's actions. Music labels and movie distributors, including the French music composers' and publishers' organization SACEM, have suggested the amendments would break international laws on intellectual property. French consumer groups, on the other hand, claimed the plan would create a "new area of freedom allowing Internet users access to cultural diversity and fair payment for creators."

19. (SBU) As a result, the GOF under Prime Minister Dominique ordered the withdrawal of the bill to be amended

to reinforce the right of consumers to make private copies of music and film disks. It would also make a distinction between people illegally downloading for profit and the estimated eight million individuals in France who occasionally add to their music and movie collections via Internet peer-to-peer sites.

¶10. (SBU) The new draft bill has not been made public. According to the French press, however, changes include a phased penalty system for small-time downloaders, starting with a warning e-mail, then a formal letter and finally fines ranging from 300 euros to 1,500 euros. Commercial downloaders would face up to three years in prison and a fine of up to 300,000 euros.

¶11. (SBU) Private users who have bought music or movies, whether on CD or DVD or online would have the right to make a small number of copies according to the French press. Currently, many disks, especially movie DVDs, have digital blocks to prevent copying, and those would have to be changed if the French bill becomes law. The previous French government bill would have made it illegal to hack those blocks, as is the case in the United States under that country's Digital Millennium Copyright Act. Under the proposed new bill, a consumer who broke such protection would not be prosecuted. And someone who copies a friend's disk would face only a 150-euro fine. However, those trying to make money off such activities or publish hacker how-tos to get around the blocks would face a year in prison and fines of up to 100,000 euros.

¶12. (SBU) The government is allegedly looking at ensuring that all music sold on Apple's iPod site be playable on MP3 players other than Apple's best-selling iPods, which is not currently the case. The French press has hinted that Apple's Music Store in France would also have to be changed under the new amendments.

¶13. (SBU) The debate in Parliament on the digital copyright bill will resume in all likelihood between March 7 and 10. The bill requires a one-time reading by each house to become law, under the emergency procedure invoked by the government.

Stapleton